

NO. 84704-5

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SUPREME COURT
STATE OF WASHINGTON
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BY RONALD R. CASPENTER
CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

PETER GOLDMARK, AS CHIEF EXECUTIVE OFFICER OF THE
DEPARTMENT OF NATURAL RESOURCES AND COMMISSIONER
OF PUBLIC LANDS,

Petitioner,

v.

ROBERT M. MCKENNA, ATTORNEY GENERAL,

Respondent.

**AGREED STATEMENT OF FACTS
AND MOTION TO SEAL ATTACHMENTS**

DAVID A. BRICKLIN #7583
Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154

ROBERT M. MCKENNA
Attorney General

MAUREEN A. HART #7831
Solicitor General
ALAN D. COPSEY #23305
Deputy Solicitor General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100

8-9-10: The motion to seal is
granted. Attachments 7, 8, 9, 12, 13,
17, 18 and 19 to the Agreed
Statement of Facts will be filed
under seal.

Jason L. Carlson
Deputy Clerk

I. AGREED STATEMENT OF FACTS

1. Introduction. Petitioner Peter Goldmark, Commissioner of Public Lands, and Respondent Robert M. McKenna, Attorney General, submit the following Agreed Statement of Facts pursuant to the Court's Order dated July 9, 2010.

2. Scope of Agreed Statement of Facts. This Agreed Statement of Facts is a complete and exclusive statement of the facts before the Court for purposes of the Court's resolution of this matter. Documents attached to this Agreed Statement of Facts are submitted to demonstrate that the party or parties who drafted the document made the statements in the document. The parties do not stipulate to the truth of accuracy of the content of each document. By providing this Agreed Statement of Facts to the Court, the parties do not agree that all of the facts herein and attachments hereto are relevant to this action. Attachments to this Agreed Statement of Facts are serially numbered and are referenced herein by those numbers.

3. Pleadings. The parties acknowledge that they have filed pleadings in this case and that those pleadings are before the Court. The parties do not stipulate to or admit the allegations in the pleadings except as the pleadings state, and do not stipulate to or admit the allegations in declarations before the Court.

4. Petitioner. Petitioner is Peter Goldmark, Commission of Public Lands for the State of Washington.

5. Respondent. Respondent is Robert M. McKenna, Attorney General of the State of Washington.

6. Petition for Condemnation. On November 30, 2009, the Public Utility District No. 1 of Okanogan County filed a Petition for Condemnation, initiating *Public Util. Dist. No. 1 of Okanogan Cy. v. Davis*, Okanogan County Superior Court No. 09-2-00679-4, seeking to condemn an easement for the installation and maintenance of an electric transmission line over public and private lands, and naming as respondents private landowners, the State of Washington, and Peter Goldmark, Commissioner of Public Lands. A true copy of the Petition, without exhibits, is attached as **Attachment 1** to this Agreed Statement of Facts. [0001-0004]

7. Amended Petition for Condemnation. On April 14, 2010, the Public Utility District No. 1 of Okanogan County filed an Amended Petition for Condemnation in *Public Util. Dist. No. 1 of Okanogan Cy. v. Davis*, Okanogan County Superior Court No. 09-2-00679-4. A true copy of the Amended Petition, without exhibits, is attached as **Attachment 2** to this Agreed Statement of Facts. [0005-0008]

8. Order Granting Motion to Intervene by Conservation Northwest. On February 24, 2010, the Okanogan County Superior Court, Judge Jack Burchard, issued an Order Granting Motion to Intervene by Conservation Northwest, limiting the intervention to the claims against Peter Goldmark and the State of Washington. A true copy of this Order is attached as **Attachment 3** to this Agreed Statement of Facts. [0009-0011]

9. Order Denying State's Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner. On May 11, 2010, the Okanogan County Superior Court, Judge Jack Burchard, issued an Order Denying State's Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner. A true copy of this Order is attached as **Attachment 4** to this Agreed Statement of Facts. [0012-0014]

10. Order Denying Conservation Northwest's Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner. On May 11, 2010, the Okanogan County Superior Court, Judge Jack Burchard, issued an Order Denying Conservation Northwest's Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner. A true copy of this Order is attached as **Attachment 5** to this Agreed Statement of Facts. [0015-0017]

11. Findings of Fact, Conclusions of Law, and Order on Public Use and Necessity – Respondents State of Washington and Peter

Goldmark. On May 11, 2010, the Okanogan County Superior Court, Judge Jack Burchard, issued Findings of Fact, Conclusions of Law, and Order on Public Use and Necessity – Respondents State of Washington and Peter Goldmark. A true copy of this Order is attached as **Attachment 6** to this Agreed Statement of Facts. [0018-0022]

12. Meetings between Peter Goldmark and Assistant Attorney General Pamela Krueger on May 25, 2010. At two meetings between Commissioner Goldmark and AAG Krueger on May 25, 2010, the Commissioner and Ms. Krueger discussed the superior court orders and the merits of the legal position advocated in the superior court. At the conclusion of the second meeting, the Commissioner communicated his intent to Ms. Krueger to appeal the superior court's orders and requested that the Office of the Attorney General file an appeal.

13. Letter from Peter Goldmark to Rob McKenna, dated June 1, 2010. On June 1, 2010, Commissioner Goldmark sent a letter to Attorney General McKenna requesting the filing of an appeal of the superior court orders. A true copy of this letter is attached as **Attachment 7** to this Agreed Statement of Facts. [0023-0025]

14. Letter from Peter Goldmark to Rob McKenna, dated June 4, 2010. On June 4, 2010, Commissioner Goldmark sent a letter to Attorney General McKenna again requesting the filing of an appeal of the

superior court orders. A true copy of this letter is attached as **Attachment 8** to this Agreed Statement of Facts. [0026]

15. Meeting between Peter Goldmark and Rob McKenna on June 7, 2010. At a meeting requested by Commissioner Goldmark, the Commissioner asked the Attorney General to file an appeal of the superior court's orders, as the Commissioner had requested.

16. Letter from Rob McKenna to Peter Goldmark, dated June 8, 2010. On June 8, 2010, Attorney General McKenna sent a letter to Commissioner Goldmark, in response to the letter from the Commissioner dated June 1, 2010 (Attachment 7 hereto), explaining the Attorney General's decision not to file an appeal of the superior court orders. A true copy of this June 8 letter is attached as **Attachment 9** to this Agreed Statement of Facts. [0027-0030]

17. News Release by Washington State Department of Natural Resources, dated June 8, 2010. On June 8, 2010, the Department of Natural Resources issued a news release titled "McKenna Refuses to Stand Up for Washington's Schools, Goldmark is Forced to Seek Other Options[;] DNR Seeks to Appeal Condemnation Ruling in Okanogan County." A true copy of this press release is attached as **Attachment 10** to this Agreed Statement of Facts. [0031-0032]

18. News Release by Office of the Attorney General, dated June 8, 2010. On June 8, 2010, the Office of the Attorney General issued an untitled news release in response to the news release issued by the Department of Natural Resources issued that same day (Attachment 10 hereto). A true copy of this press release is attached as **Attachment 11** to this Agreed Statement of Facts. [0033]

19. Letter from Peter Goldmark to Rob McKenna, dated June 9, 2010. On June 9, 2010, Commissioner Goldmark sent a letter to Attorney General McKenna, in response to the letter from the Attorney General dated June 8, 2010 (Attachment 9 hereto), requesting the appointment of a special assistant attorney general to represent the Commissioner in an appeal of the superior court orders. A true copy of this June 9 letter is attached as **Attachment 12** to this Agreed Statement of Facts. [0034]

20. Letter from Rob McKenna to Peter Goldmark, dated June 9, 2010. On June 9, 2010, Attorney General McKenna sent a letter to Commissioner Goldmark, in response to the letter from the Commissioner dated June 9, 2010 (Attachment 12 hereto), explaining the Attorney General's decision not to appoint a special assistant attorney general to represent the Commissioner in an appeal of the superior court orders and enclosing a copy of the letter from the Attorney General dated June 8,

2010 (Attachment 9 hereto). A true copy of this response letter, without the enclosure, is attached as **Attachment 13** to this Agreed Statement of Facts. [0035-0036]

21. News Release by Washington State Department of Natural Resources, dated June 10, 2010. On June 10, 2010, the Department of Natural Resources issued a news release titled “McKenna refuses to appoint a Special Assistant Attorney General to protect Common School Trust lands in Okanogan County.” A true copy of this press release is attached as **Attachment 14** to this Agreed Statement of Facts. [0037]

22. Notice of Appeal. On June 10, 2010, Conservation Northwest, intervenor in the condemnation action in the superior court, filed a Notice of Appeal of the superior court orders identified herein as Attachment 4 (Order Denying State’s Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner), Attachment 5 (Order Denying Conservation Northwest’s Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner), and Attachment 6 (Findings of Fact, Conclusions of Law, and Order on Public Use and Necessity – Respondents State of Washington and Peter Goldmark), seeking review in Division III of the Court of Appeals. The appeal was assigned cause number 29121-9 by the Court of Appeals. A true copy of

this Notice of Appeal, without attachments, is attached as **Attachment 15** to this Agreed Statement of Facts. [0038-0039]

23. Notice of Appeal. On June 10, 2010, the Public Utility District No. 1 of Okanogan County Conservation Northwest, petitioner in the condemnation action in the superior court, filed a Notice of Appeal of the superior court order identified herein as Attachment 3 (Order Granting Motion to Intervene by Conservation Northwest), seeking review in Division III of the Court of Appeals. The appeal was assigned cause number 29123-5 by the Court of Appeals. A true copy of this Notice of Appeal, without attachment, is attached as **Attachment 16** to this Agreed Statement of Facts. [0040-0041]

24. Letter from Peter Goldmark to Rob McKenna, dated June 15, 2010. On June 15, 2010, Commissioner Goldmark sent a letter to Attorney General McKenna asking the Attorney General to reconsider his decisions not to appeal the superior court orders and not to appoint a special assistant attorney general. A true copy of this letter is attached as **Attachment 17** to this Agreed Statement of Facts. [0042-0043]

25. Letter from Rob McKenna to Peter Goldmark, dated June 16, 2010. On June 16, 2010, Attorney General McKenna sent a letter to Commissioner Goldmark, in response to the letter from the Commissioner dated June 15, 2010 (Attachment 17 hereto), reaffirming the Attorney

General's decisions not to appeal the superior court orders and not to appoint a special assistant attorney general. A true copy of this June 16 letter is attached as **Attachment 18** to this Agreed Statement of Facts. [0044-0046]

26. Letter from Peter Goldmark to Rob McKenna, dated June 18, 2010. On June 18, 2010, Commissioner Goldmark sent a letter to Attorney General McKenna responding to the Attorney General's letter of June 16, 2010 (Attachment 18 hereto). A true copy of this June 18 letter is attached as **Attachment 19** to this Agreed Statement of Facts. [0047-0048]

27. News Release by Washington State Department of Natural Resources, dated June 21, 2010. On June 21, 2010, the Department of Natural Resources issued a news release titled "Commissioner Goldmark Files with Supreme Court to Compel Attorney General to Represent the State[;] In the meantime, AG McKenna to file appeal 'contingently' in Okanogan PUD condemnation case." A true copy of this press release is attached as **Attachment 20** to this Agreed Statement of Facts. [0049-0050]

28. Contingent Notice of Appeal to the Court of Appeals. On June 21, 2010, the Office of the Attorney General, representing Commissioner Goldmark and the State of Washington, respondents in the

condemnation action in the superior court, filed a Contingent Notice of Appeal to the Court of Appeals of the superior court orders identified herein as Attachment 4 (Order Denying State's Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner) and Attachment 6 (Findings of Fact, Conclusions of Law, and Order on Public Use and Necessity – Respondents State of Washington and Peter Goldmark), seeking review in Division III of the Court of Appeals. The appeal was assigned cause number 29190-1 by the Court of Appeals. The Attorney General stated his intention to withdraw the appeal if he prevails in this Petition Against State Officer. A true copy of this Contingent Notice of Appeal, without attachments, is attached as **Attachment 21** to this Agreed Statement of Facts. [0051-0054]

II. MOTION TO SEAL ATTACHMENTS

A. Identity of Moving Parties

This motion is filed jointly by Petitioner Peter Goldmark, Commissioner of Public Lands, and Respondent Robert M. McKenna, Attorney General.

B. Statement of Relief Sought

Pursuant to GR 15(c)(2)(A) and (F), the parties jointly move that the documents identified as Attachments 7, 8, 9, 12, 13, 17, 18, and 19 to the Agreed Statement of Facts be filed and maintained under seal.

C. Facts Relevant to Motion

On June 21, 2010, the Commissioner brought this matter as an original action, a Petition Against State Officer, seeking a writ of mandamus to compel the Attorney General to appeal. In an Order issued July 9, 2010, this Court retained review of the Petition, scheduled oral argument, and established a briefing schedule.

The seven Attachments identified in this motion are letters from the Attorney General to the Commissioner of Public Lands, or from the Commissioner of Public Lands to the Attorney General, and are part of an exchange of communication addressing whether the Attorney General would appeal orders entered by the Okanogan County Superior Court in *Public Util. Dist. No. 1 of Okanogan Cy. v. Davis*, Okanogan County Superior Court No. 09-2-00679-4. The Commissioner and the State of Washington are named as respondents in that action. The superior court had issued three orders adverse to the Commissioner, two that ruled on cross-motions for summary judgment, and one that entered findings of fact, conclusions of law, and an order on public use and necessity. *See* Attachments 4, 5, and 6 herein, attached to the Agreed Statement of Facts.

The letters from the Attorney General to the Commissioner were marked as confidential attorney/client privileged communications when they were created. *See* Attachment 9 (letter dated June 8, 2010),

Attachment 13 (letter dated June 9, 2010), and Attachment 18 (letter dated June 16, 2010), all attached herein to the Agreed Statement of Facts. The letters from the Commissioner to the Attorney General are not marked as privileged attorney/client communications, but address the same subject matter—whether the Attorney General would file an appeal of the superior court orders in *Public Util. Dist. No. 1 of Okanogan Cy. v. Davis*—as the letters from the Attorney General, and they are part of the course of communication that includes the letters from the Attorney General. See Attachment 7 (letter dated June 1, 2010), Attachment 8 (letter dated June 4, 2010), Attachment 12 (letter dated June 9, 2010), Attachment 17 (letter dated June 15, 2010), and Attachment 19 (letter dated June 18, 2010), all attached herein to the Agreed Statement of Facts.

The letter identified as Attachment 9 (from the Attorney General to the Commissioner, dated June 8, 2010) was attached as Appendix A to the Attorney General's Answer to Petition Against State Officer, filed on June 28, 2010. That letter was sealed by the Deputy Clerk of this Court in a ruling dated July 15, 2010, in response to a motion to seal filed by the Attorney General.

D. Grounds for Relief and Argument

The dispute in this case is whether the Attorney General has a mandatory and ministerial duty to file an appeal of a superior court

decision adverse to the Commissioner of Public Lands when requested to do so by the Commissioner, or whether the Attorney General possesses constitutional and statutory discretion to manage litigation, including appeal decisions, involving the State and state officers.

The documents identified in the Agreed Statement of Facts provide the factual and procedural context for resolving this dispute. They demonstrate the origin of the dispute and the basis of the disagreement. Eight letters attached to the Agreed Statement of Facts—identified as Attachments 7, 8, 9, 12, 13, 17, 18, and 19—are subject to attorney-client privilege under RCW 5.60.060(2)(a), and contain information relating to representation under RPC 1.6. The documents are communications between attorney and client in the context of representation in litigation or generated by a request for advice – the types of communications to which attorney client privilege applies. See *State v. Perrow*, ___ Wn.2d ___, 231 P.3d 853, 855 (2010); *Dietz v. Doe*, 131 Wn.2d 835, 842-43, 935 P.2d 611 (1997). The privilege extends to documents that contain a privileged communication. *Dietz*, 131 Wn.2d at 842; *Kammerer v. Western Gear Corp.*, 96 Wn.2d 416, 421, 635 P.2d 708 (1981).

Attachments 7, 8, 9, 12, 13, 17, 18, and 19 also constitute information relating to representation under RPC 1.6. Consistent with exceptions to attorney-client privilege, RPC 1.6(b)(5) authorizes a lawyer,

“to the extent the lawyer reasonably believes necessary,” to “reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client” or to “respond to allegations in any proceeding concerning the lawyer’s representation of the client.” See *Pappas v. Holloway*, 114 Wn.2d 198, 204, 787 P.2d 30 (1990) (RPC 1.6(b) allows an attorney accused of mismanagement to testify as to communications between himself and the client in order to defend adequately against such allegations).

Comment 14 to RPC 1.6 explains that “[p]aragraph (b) [of the rule] permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified.” It further provides that “[i]f the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.” This motion is consistent with that directive.

Accordingly, the parties seek to file Attachments 7, 8, 9, 12, 13, 17, 18, and 19 under seal to preserve the interests of the State of Washington and the Commissioner of Public Lands in the confidentiality

of these attorney-client privileged communications to the fullest extent practicable given the issues and allegations presented in the Petition the Commissioner has filed against the Attorney General. See GR 15(c)(2)(A) and (F).

RESPECTFULLY SUBMITTED this 9th day of August, 2010.

BRICKLIN & NEWMAN, LLP

*Maureen Hart w/ telephone
approval for*

DAVID A. BRICKLIN #7583
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154

Attorney for Peter Goldmark,
Commissioner of Public Lands

ROBERT M. MCKENNA
Attorney General

Maureen Hart

MAUREEN A. HART #7831
Solicitor General

Maureen Hart for

ALAN D. COPSEY #23305
Deputy Solicitor General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100

Attorneys for Robert M.
McKenna, Attorney General

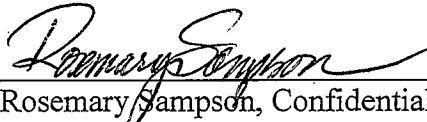
PROOF OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of the Agreed Statement of Facts to be served on the following via electronic transmittal:

DAVID A. BRICKLIN
Attorney for Peter Goldmark
Commissioner of Public Lands

bricklin@bnd-law.com

DATED this 9th day of August, 2010.



Rosemary Sampson, Confidential Secretary

ATTACHMENT 1

RECEIVED
DEC - 3 2009

ATTORNEY GENERAL'S OFFICE
NATURAL RESOURCES DIVISION

IN THE SUPERIOR COURT OF WASHINGTON FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

-vs-

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
Husband and wife; and WILLIAM C. WEAVER,
Custodian for Christopher C. Weaver, a minor;
and STATE OF WASHINGTON, and PETER
GOLDMARK, Commissioner of Public Lands,
Respondents.)

No. 09-2-00679-4

PETITION FOR
CONDEMNATION

COMES NOW, the above named Petitioner, Public Utility District No. 1 of
Okanogan County, by and through its attorney of record, Michael D. Howe, Omak,
Washington, and states and alleges as follows:

1. The above named Petitioner is a municipal corporation of the State
of Washington located in Okanogan County, State of Washington.

2. The above named Respondents are the record owners or have an
interest in certain parcels or real property located in the County of Okanogan,
State of Washington, as more particularly detailed and described in **Exhibit A**
attached hereto and incorporated herein as though fully set forth.

PETITION FOR CONDEMNATION
025.199

1

LAW OFFICE OF MICHAEL D. HOWE
10 Valley View Park Drive
Omak, WA 98841
Tele. 509.826.0532
Fax 509.826.4543

Goldmark v. McKenna
Agreed Stmt of Facts 0001

1 3. Pursuant to RCW 54.16.020 and RCW 8.12.040, Petitioner has
2 passed and adopted Resolution No. 1489 expressing the Petitioner's desire to
3 acquire by eminent domain certain property interests required for the installation
4 and maintenance of structures and other improvements necessary for the
5 transmission and distribution of electrical power to the public. A certified copy of
6 said resolution is attached hereto as **Exhibit B** and incorporated herein as though
7 fully set forth.

8 4. An easement over and across said properties is necessary for the
9 installation and maintenance of the said facilities. It is not the desire of the
10 Petitioner to obtain ownership of any of the subject parcels. All of the subject
11 parcels are located within the corridor designated by the Petitioner for the
12 installation and maintenance of the Methow Transmission Project. The location of
13 necessary easements for installation of electrical lines and structures and the
14 location of necessary access easements is more particularly shown in **Exhibit C**
15 attached hereto and incorporated herein as though fully set forth.

16 5. The proposed acquisition of said property interests by eminent
17 domain is for a public use and purpose, i.e., for the development, construction,
18 and maintenance of facilities and infrastructure to support the implementation of
19 Petitioner's Methow Transmission Project for the transmission and distribution of
20 electrical power to the public. The public interest requires the acquisition of
21 easements over the subject property to accomplish the above said public purpose.
22 The property sought to be condemned is necessary for said public use and
23 improvement.

24 WHEREFORE, the Petitioner, Public Utility District No. 1 of Okanogan
County, prays as follows:

 1. That a preliminary hearing on this Petition be held for purposes of
obtaining an order adjudicating public use and necessity.

 2. That compensation be paid by the Petitioner to the Respondents in
an amount to be determined by a jury, unless a jury be waived.

PETITION FOR CONDEMNATION
025.199

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LAW OFFICE OF MICHAEL D. HOWE
10 Valley View Park Drive
Omak, WA 98841
Tele. 509.826.0532
Fax 509.826.4543

1
2 3. That the Court award an easement over the subject properties to the
3 Petitioner.

4 4. For such other and further relief as the Court deems just and
5 equitable.

6 Dated this 30th day of November, 2009.

7 **LAW OFFICE OF MICHAEL D. HOWE:**

8
9 By 

10 **Michael D. Howe, WSBA #5895**

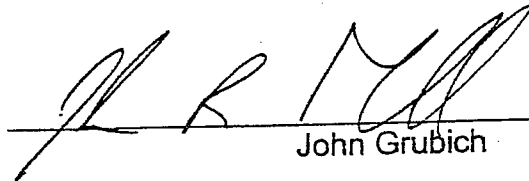
11 Attorney for Petitioner Public Utility District

12 No. 1 of Okanogan County
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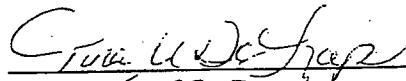
1 STATE OF WASHINGTON)

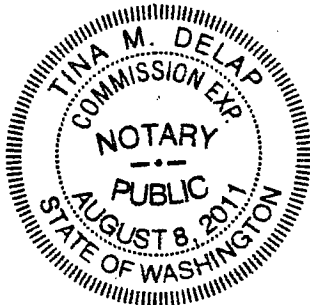
2 : ss
3 County of Okanogan)

4 John Grubich, being first duly sworn on oath, deposes and says: That I am
5 the General Manager of Public Utility District No. 1 of Okanogan County, Petitioner
6 herein; that I have read the within and foregoing Petition for Condemnation, know
7 the contents thereof and believe the same to be true and correct.

8 
9 John Grubich

10 SUBSCRIBED AND SWORN to before me this 30TH day of NOVEMBER,
11 2009.

12 
13 TINA M DELAP (PRINTED NAME)
14 NOTARY PUBLIC in and for the State of
15 Washington residing at MALOTI, WA.
16 My appointment expires 8-2-2011.



ATTACHMENT 2

FILED
10 APR 14 2011-27

SEATTLE
JASAC

SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

No. 09-2-00679-4

AMENDED PETITION FOR
CONDEMNATION

By this action, the Public Utility District No. 1 of Okanogan County ("PUD") is acquiring easements over certain property necessary for the Methow Transmission Project. The PUD, for its Petition, submits as follows:

1. PARTIES

1.1. The Petitioner PUD is a municipal corporation of the State of Washington located in Okanogan County, Washington, duly organized and existing under Title 54 RCW.

1.2. The above-named Respondents are the record owners or have an interest in certain parcels or real property located in Okanogan County, Washington, as more particularly

AMENDED PETITION FOR CONDEMNATION - I

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 detailed and described in Exhibits A, B, and C, attached hereto and incorporated herein as though
2 fully set forth.

3 **2. AUTHORITY TO CONDEMN**

4 The PUD is statutorily authorized to pursue this condemnation action, including
5 RCW 54.16.020 and RCW 54.16.050.

6 **3. RESOLUTION NO. 1489**

7 3.1. The PUD timely caused notice of its planned condemnation to be mailed and
8 published pursuant to Chapter 8.12 RCW and RCW 8.25.290.

9 3.2. The PUD Board of Commissioners adopted Resolution No. 1489 on August 18,
10 2009, expressing the PUD's desire to acquire by eminent domain certain property interests
11 necessary for the Methow Transmission Project. A certified copy of Resolution No. 1489 is
12 attached hereto as Exhibit A and incorporated herein by reference. Resolution 1489 authorizes
13 and directs the PUD's legal counsel to begin and prosecute the necessary proceedings provided
14 by law to condemn, take, damage, and appropriate the real property interests necessary to carry
15 out the provisions of the Resolution.

16 **4. RESOLUTION NO. 1502**

17 4.1. The PUD timely caused notice of its planned final action to be mailed and
18 published pursuant to Chapter 8.12 RCW and RCW 8.25.290.

19 4.2. The PUD Board of Commissioners adopted Resolution No. 1502 on March 23,
20 2010. A certified copy of Resolution No. 1502 is attached hereto as Exhibit B and incorporated
21 herein by reference. Resolution 1502 further describes the real property interests of the State of
22 Washington that are the subject of the Resolution, and attaches a record of survey showing the
23 exact location of the proposed easements over the land owned by the State of Washington. It
24 further authorizes and directs the PUD's legal counsel to prosecute the necessary proceedings
25
26

AMENDED PETITION FOR CONDEMNATION - 2

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 provided by law to condemn, take, damage, and appropriate the real property interests necessary
2 to carry out the provisions of the Resolution.

3 **5. PUBLIC USE**

4 The object and use for which the property and property rights described in Exhibits A
5 through C are sought to be taken or damaged is a public object and a public use, *i.e.*, acquisition
6 of easements to construct and maintain transmission line and support structures and
7 infrastructure necessary for the Methow Transmission Project, in order to allow for the safe and
8 reliable transmission and distribution of electrical power to the PUD's customers.

9 **6. NECESSITY**

10 Easements over Respondents' properties must be acquired in order to construct and
11 maintain a new transmission line to transmit and distribute electrical power to the Methow
12 Valley. All of the subject parcels are located within the corridor designated by the PUD for the
13 installation and maintenance of the Methow Transmission Project. The location of necessary
14 easements for installation of electrical lines and structures and the location of necessary access
15 easements are more particularly shown in Exhibit C, attached hereto and incorporated by
16 reference. The easements sought in this condemnation action are being acquired in the public
17 interest, are reasonably necessary, and are required for the transmission line project.

18 **7. RELIEF REQUESTED**

19 Wherefore, the PUD prays that the Court enter an order:

20 7.1. Adjudicating that the use for which the property interests are sought is a public
21 use; that the public interest requires the prosecution of this action; and that the acquisition of the
22 property interests described in this Amended Petition is for a public use;

23 7.2. Directing that a jury be summoned and called in the manner provided by law to
24 ascertain the just compensation to be paid for the property and property rights described herein,
25
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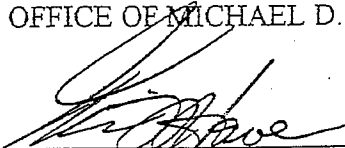
1 unless a jury be waived, in which case the same determination shall be made by the Court, sitting
2 without a jury;

3 7.3. Assigning the first reasonably available trial date for the ascertaining of such
4 compensation as required by RCW 8.12.090; and

5 7.4. For such other and further relief as the Court deems just and equitable.

6 DATED this 14th day of April, 2010.

7 LAW OFFICE OF MICHAEL D. HOWE

8
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10 Michael D. Howe, WSBA #5895, and
11 FOSTER PEPPER PLLC
12 P. Stephen DiJulio, WSBA No. 7139
13 Adrian Urquhart Winder, WSBA No. 38071

14 Attorneys for Petitioner Okanogan County
15 PUD No. 1
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AMENDED PETITION FOR CONDEMNATION - 4

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ATTACHMENT 3

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OKANOGAN COUNTY
SUPERIOR COURT
JACKIE BRAULEY, CD CLERK

SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

NO. 09-2-00679-4

~~PROPOSED~~ ORDER GRANTING
MOTION TO INTERVENE BY
CONSERVATION NORTHWEST

THIS MATTER came before the Court on Conservation Northwest's Motion to Intervene.
The Court considered the following documents in connection with that motion:

1. Motion to Intervene by Conservation Northwest;
2. Declaration of David Werntz in Support of Conservation NW's Motion to Intervene;
3. Declaration of David S. Mann in Support of Conservation NW's Motion to Intervene;
4. Response of Public Utility District No. 1 of Okanogan County in Opposition to Motion to Intervene by Conservation Northwest;

ORDER GRANTING MOTION TO INTERVENE
BY CONSERVATION NORTHWEST - 1

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Goldmark v. McKenna
Agreed Stmt of Facts 0009

5. Conservation Northwest's Reply in Support of Its Motion to Intervene;

6. Declaration of David S. Mann in Support of Conservation Northwest's Reply in Support of its Motion to Intervene;

7. Respondents Kelpman and Gebbers' Concurrence with Conservation Northwest's Motion to Intervene; and

8. The pleadings and papers on file in this matter.

The Court, deeming itself fully advised, and having concluded that limited intervention by Conservation Northwest is warranted, it is hereby

ORDERED, ADJUDGED AND DECREED that Conservation Northwest's Motion to Intervene is GRANTED, as a matter of right and by permission, as follows:

1. Conservation Northwest's intervention is limited to the submission of briefing and argument on the issue of Petitioner's authority to condemn State lands and whether it has proceeded properly in attempting to do so.

2. Conservation Northwest's intervention is without prejudice to Petitioner's right to settle this action separately with the State of Washington and Peter Goldmark, Commissioner of Public Lands (collectively, the "State"), to enter judgment by stipulation regarding easements over State lands, or to dismiss this action as to the State. ~~In the event that Petitioner and the State reach an agreement regarding the easements prior to the hearing on public use and necessity,~~ Conservation Northwest's purpose for intervening in this action will become moot.

SO ORDERED this 24 day of February, 2010.

The Honorable Jack Burchard, Judge

ORDER GRANTING MOTION TO INTERVENE
BY CONSERVATION NORTHWEST - 2

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1 Presented by:

2 LAW OFFICE OF MICHAEL D. HOWE

3 

4 Michael D. Howe, WSBA No. 5895, and
FOSTER PEPPER PLLC

5 P. Stephen DiJulio, WSBA No. 7139

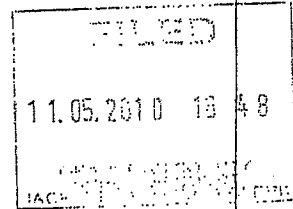
6 Edmund W. Robb, WSBA No. 35948

7 Attorneys for Petitioner Okanogan PUD No. 1

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ORDER GRANTING MOTION TO INTERVENE
BY CONSERVATION NORTHWEST - 3

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ATTACHMENT 4



SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

NO. 09-2-00679-4

ORDER DENYING STATE'S MOTION
FOR SUMMARY JUDGMENT AND
GRANTING SUMMARY JUDGMENT IN
FAVOR OF PETITIONER

THIS MATTER came before the Court on the Motion for Summary Judgment filed by
Respondents State of Washington and Peter Goldmark, Commissioner of Public Lands
(collectively, "State"). The Court has considered the following documents in connection with that
motion:

1. State's Motion for Summary Judgment and Memorandum in Support (April 1, 2010);
2. Declaration of Pamela Krueger (April 1, 2010);
3. Declaration of Stephen Saunders (April 1, 2010);

ORDER DENYING STATE'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING SUMMARY JUDGMENT IN FAVOR
OF PETITIONER - 1

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ORIGINAL

SCANNED

Goldmark v. McKenna
Agreed Stmt of Facts 0012

1 4. Petitioner's Opposition to State of Washington and Peter Goldmark's Motion for
2 Summary Judgment (April 19, 2010);

3 5. Declaration of Derek Miller in Support of Petitioner's Oppositions to Motions for
4 Summary Judgment (April 19, 2010);

5 6. Declaration of Michael D. Howe in Support of Petitioner's Oppositions to State and
6 Intervenor Motions for Summary Judgment (April 19, 2010);

7 7. State's Reply in Support of Motion for Summary Judgment and Memorandum in
8 Support (April 23, 2010);

9 8. Declaration of Stephen Saunders (April 23, 2010);

10 9. Intervenor Conservation Northwest's Motion for Summary Judgment (April 1,
11 2010);

12 10. Petitioner's Opposition to Intervenor Conservation Northwest's Motion for
13 Summary Judgment (April 19, 2010);

14 11. Intervenor Conservation Northwest's Reply to Petitioner's Opposition to
15 Conservation Northwest's Motion for Summary Judgment (April 23, 2010); and

16 12. The pleadings and records on file in this matter.

17 The Court, deeming itself fully advised, and having determined that the State's Motion for
18 Summary Judgment should be denied and that summary judgment in favor of Petitioner is
19 warranted, it is hereby

20 ORDERED, ADJUDGED AND DECREED that the State's Motion for Summary Judgment
21 is DENIED; and it is further

22 ORDERED, ADJUDGED AND DECREED that Petitioner's request for summary
23 judgment is GRANTED. ~~There are no material facts in dispute. Petitioner, as a Washington public~~
24 ~~utility district, is authorized as a matter of law to condemn school lands held in trust by the State.~~
25 ~~The lands subject to this action are not dedicated to a public purpose or otherwise set aside by law~~
26

ORDER DENYING STATE'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING SUMMARY JUDGMENT IN FAVOR
OF PETITIONER - 2

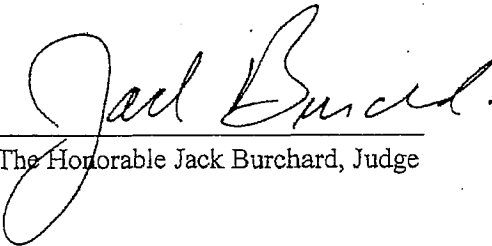
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Goldmark v. McKenna
Agreed Stmt of Facts 0013


1 ~~for a purpose inconsistent with the PUD's acquisition and use for a transmission line corridor.~~
2 ~~Summary judgment is hereby entered for the Petitioner, as Petitioner has the legal authority to~~
3 ~~condemn the State-owned trust lands at issue in this case.~~

4 SO ORDERED this 11th day of May, 2010.

5
6 
7 The Honorable Jack Burchard, Judge

8 Presented by:

9 FOSTER PEPPER PLLC

10
11 
12 P. Stephen DiJulio, WSBA No. 7139
13 Adrian Urquhart Winder, WSBA No. 38071, and
14 LAW OFFICE OF MICHAEL D. HOWE
Michael D. Howe, WSBA No. 5895

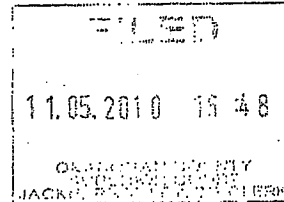
15 Attorneys for Petitioner Okanogan County
16 PUD No. 1
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ORDER DENYING STATE'S MOTION FOR SUMMARY
JUDGMENT AND GRANTING SUMMARY JUDGMENT IN FAVOR
OF PETITIONER - 3

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ATTACHMENT 5



SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

NO. 09-2-00679-4

ORDER DENYING CONSERVATION
NORTHWEST'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING SUMMARY JUDGMENT IN
FAVOR OF PETITIONER

THIS MATTER came before the Court on the Motion for Summary Judgment filed by
Intervenor Conservation Northwest. The Court has considered the following documents in
connection with that motion:

1. Intervenor Conservation Northwest's Motion for Summary Judgment (April 1,
2010);
2. Petitioner's Opposition to Intervenor Conservation Northwest's Motion for
Summary Judgment (April 19, 2010);

ORDER DENYING CONSERVATION NORTHWEST'S MOTION
FOR SUMMARY JUDGMENT AND GRANTING SUMMARY
JUDGMENT IN FAVOR OF PETITIONER - 1

51065130.3

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Goldmark v. McKenna
Agreed Stmt of Facts 0015

1 3. Declaration of Derek Miller in Support of Petitioner's Oppositions to Motions for
2 Summary Judgment (April 19, 2010);

3 4. Declaration of Michael D. Howe in Support of Petitioner's Oppositions to State and
4 Intervenor Motions for Summary Judgment (April 19, 2010);

5 5. Intervenor Conservation Northwest's Reply to Petitioner's Opposition to
6 Conservation Northwest's Motion for Summary Judgment (April 23, 2010);

7 6. Respondents State of Washington and Peter Goldmark's ("State") Motion for
8 Summary Judgment and Memorandum in Support (April 1, 2010);

9 7. Declaration of Pamela Krueger (April 1, 2010);

10 8. Declaration of Stephen Saunders (April 1, 2010);

11 9. Petitioner's Opposition to State of Washington and Peter Goldmark's Motion for
12 Summary Judgment (April 19, 2010);

13 10. State's Reply in Support of Motion for Summary Judgment and Memorandum in
14 Support (April 23, 2010);

15 11. Declaration of Stephen Saunders (April 23, 2010); and

16 12. The pleadings and records on file in this matter.

17 The Court, deeming itself fully advised, and having determined that Conservation
18 Northwest's Motion for Summary Judgment should be denied and that summary judgment in favor
19 of Petitioner is warranted, it is hereby

20 ORDERED, ADJUDGED AND DECREED that Conservation Northwest's Motion for
21 Summary Judgment is DENIED; and it is further


22 ORDERED, ADJUDGED AND DECREED that Petitioner's request for summary
23 judgment is GRANTED. ~~There are no material facts in dispute. Petitioner, as a Washington public~~
24 ~~utility district, is authorized as a matter of law to condemn school lands held in trust by the State.~~
25 ~~The lands subject to this action are not dedicated to a public purpose or otherwise set aside by law~~
26

ORDER DENYING CONSERVATION NORTHWEST'S MOTION
FOR SUMMARY JUDGMENT AND GRANTING SUMMARY
JUDGMENT IN FAVOR OF PETITIONER - 2

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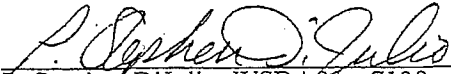
1 ~~for a purpose inconsistent with the PUD's acquisition and use for a transmission line corridor.~~
2 ~~Summary judgment is hereby entered for the Petitioner as Petitioner has the legal authority to~~
3 ~~condemn the State-owned trust lands at issue in this case. Costs and statutory attorney fees are~~
4 ~~awarded to Petitioner, subject to the filing of a cost bill and entry of a judgment summary consistent~~
5 ~~with law.~~

6 SO ORDERED this 11th day of May, 2010.

7 
8
9 The Honorable Jack Burchard, Judge

10 Presented by:

11 FOSTER PEPPER PLLC

12
13 
14 P. Stephen DiJulio, WSBA No. 7139
15 Adrian Urquhart Winder, WSBA No. 38071, and
16 LAW OFFICE OF MICHAEL D. HOWE
Michael D. Howe, WSBA No. 5895

17 Attorneys for Petitioner Okanogan County
18 PUD No. 1
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ORDER DENYING CONSERVATION NORTHWEST'S MOTION
FOR SUMMARY JUDGMENT AND GRANTING SUMMARY
JUDGMENT IN FAVOR OF PETITIONER - 3

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Goldmark v. McKenna
Agreed Stmt of Facts 0017

ATTACHMENT 6

11.01.2010 10:40

SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

NO. 09-2-00679-4

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER ON PUBLIC USE
AND NECESSITY – RESPONDENTS
STATE OF WASHINGTON AND PETER
GOLDMARK

1. INTRODUCTION

This matter came on before the undersigned Judge of the above-entitled court on the
Petition of Public Utility District No. 1 of Okanogan County ("PUD") and the request for an
Order declaring that the object and use for which the PUD is acquiring easements over State-
owned properties in this case is a public object and a public use and that the acquisition of the
easements sought by the PUD is necessary to that public use, *i.e.*, acquisition of easements to
enable the PUD to construct and maintain a new transmission line to supply electrical power to
the Methow Valley. Subject to their motion for summary judgment on the PUD's condemnation

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER ON PUBLIC USE AND NECESSITY – STATE OF
WASHINGTON AND PETER GOLDMARK - 1

51066656-4

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Goldmark v. McKenna
Agreed Stmt of Facts 0018

1 authority, Respondents State of Washington and Peter Goldmark (collectively, "State") have
2 stated they will not oppose entry of the order on public use and necessity.

3 Having considered the record before it and the prior proceedings in this action, the Court
4 enters the following Findings of Fact, Conclusions of Law, and Order on Public Use and
5 Necessity.

6 **2. FINDINGS OF FACT**

7 **2.1. Identity of Condemnor**

8 The condemnor is Public Utility District No. 1 of Okanogan County, a Washington
9 municipal corporation, duly organized and existing under Title 54 RCW. The PUD is
10 represented by Michael D. Howe of the Law Office of Michael D. Howe and P. Stephen DiJulio
11 of Foster Pepper PLLC.

12 **2.2. Identity of Condemnees**

13 The condemnees subject to this Order are Respondents State of Washington and Peter
14 Goldmark, Commissioner of Public Lands. The State is represented by Pamela L. Krueger,
15 Assistant Attorney General. The State either owns or has an interest in the land, property, and
16 property rights that are the subject of this condemnation action commenced pursuant to chapter
17 54.16 RCW and RCW 8.12.040.

18 **2.3. Background of Transmission Line Project**

19 The Court hereby incorporates the facts set forth in *Gebbers v. Okanogan County PUD*
20 *No. 1*, 144 Wn. App. 371, 183 P.3d 324, *rev. denied*, 165 Wn.2d 1004 (2008).

21 **2.4. Resolution 1489**

22 On August 18, 2009, the PUD Board of Commissioners adopted Resolution No. 1489. A
23 certified copy of the Resolution is attached as Exhibit A to the Amended Petition for
24 Condemnation filed in the present action. By adoption of Resolution No. 1489, the PUD Board
25 of Commissioners resolved that the public's use and necessity require the acquisition of
26 easements over the State's properties for possession, ownership, development, construction, and

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER ON PUBLIC USE AND NECESSITY – STATE OF
WASHINGTON AND PETER GOLDMARK - 2

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1 maintenance of structures and infrastructure necessary to construct and maintain transmission
2 line and support structures and infrastructure necessary for the transmission line project. It
3 further resolved that this acquisition is necessary to allow the safe and reliable transmission and
4 distribution of electrical power to the PUD's customers in the Methow Valley.

5 2.5. Resolution No. 1502

6 The PUD Board of Commissioners adopted Resolution No. 1502 on March 23, 2010. A
7 certified copy of Resolution No. 1502 is attached as Exhibit B to the Amended Petition for
8 Condemnation. Resolution 1502 further described the real property interests of the State that are
9 the subject of the Resolution, and attached a record of survey showing the exact location of the
10 proposed easements over the land owned by the State.

11 2.6. Proper Notice Given to the State

12 The PUD gave the State at least 15 days' notice by mail and publication as required under
13 RCW 8.25.290 prior to the PUD's consideration and adoption of Resolution No. 1489 and
14 Resolution No. 1502. Declaration of Tina DeLap (Jan. 20, 2010), Exs. A-D; Declaration of Tina
15 DeLap Regarding Resolution 1502 (Apr. 23, 2010), Exs. A-C.

16 2.7. The Methow Transmission Project is a Public Use

17 The State stipulates, and the Court independently finds, that the transmission line project
18 for which the easements over the Properties are being condemned constitutes a public use.

19 2.8. The State's Properties are Necessary for the Transmission Line Project

20 The State does not oppose entry of an order of public use and necessity. And, the Court
21 independently finds that easements over the State's properties must be acquired in order to
22 construct and maintain a new transmission line to transmit and distribute electrical power to the
23 Methow Valley. Resolution No. 1489 and Resolution No. 1502 authorize the acquisition by
24 condemnation of easements over the State's properties, which are legally described in Exhibits A
25 and B to the Amended Petition for Condemnation (collectively, the "Properties"). A record of
26 survey is also attached as Exhibit C to the Amended Petition. The PUD seeks to acquire a

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER ON PUBLIC USE AND NECESSITY – STATE OF
WASHINGTON AND PETER GOLDMARK - 3

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1 permanent easement across the Properties. The easements sought in this condemnation action
2 are reasonably necessary and required for the transmission line project.

3 2.9. Lands are "School Lands"

4 The State has admitted that the lands subject to this action are school trust lands, or
5 "school lands." See RCW 54.16.050.

6 2.10. General

7 Any Conclusion in Section 3 that is more properly characterized as a Finding of Fact is
8 incorporated herein.

9 3. CONCLUSIONS OF LAW

10 3.1. This Court has jurisdiction over the parties and the subject matter of this action.

11 3.2. The PUD is statutorily authorized to pursue this condemnation by
12 RCW 54.16.020 and .050. The Court incorporates herein by reference its rulings on the motions
13 for summary judgment on condemnation authority.

14 3.3. The notice provided to the State prior to the PUD's consideration and adoption of
15 Resolution No. 1489 and Resolution No. 1502 conformed to the requirements of RCW 8.25.290.

16 3.4. The Properties have been adequately described under Washington law. See *State*
17 *ex rel. Willapa Elec. Co. v. Superior Court*, 196 Wn. 523, 529, 83 P.2d 742 (1938) (requiring
18 only reasonable certainty).

19 3.5. The transmission line project for which the easements over the Properties are
20 being condemned constitutes a public use.

21 3.6. Easements over the Properties described in the Amended Petition for
22 Condemnation are acquired in the public interest, and necessity requires the acquisition of such
23 easements.

24 3.7. Any Finding in Section 2 that is more properly characterized as a Conclusion of
25 Law is incorporated herein.

26
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER ON PUBLIC USE AND NECESSITY – STATE OF
WASHINGTON AND PETER GOLDMARK - 4

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ATTACHMENTS 7, 8 AND 9 SEALED

ATTACHMENT 10



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MCKENNA REFUSES TO STAND UP FOR WASHINGTON'S SCHOOLS, GOLDMARK IS FORCED TO SEEK OTHER OPTIONS

FOR IMMEDIATE RELEASE

June 8, 2010

MCKENNA REFUSES TO STAND UP FOR WASHINGTON'S SCHOOLS, GOLDMARK IS FORCED TO SEEK OTHER OPTIONS DNR Seeks To Appeal Condemnation Ruling In Okanogan County

OLYMPIA – The Washington State Department of Natural Resources (DNR) today announces its intention to appeal the recent decision in the Okanogan County Superior Court regarding the condemnation of Common School Trust lands for an Okanogan PUD transmission line.

"We have a fiduciary responsibility to manage the trusts for current and future generations. I believe that Okanogan PUD's proposal will have unacceptable negative impacts, including increased fire risk and higher management costs for the trusts," said Commissioner of Public Lands Peter Goldmark. "I am deeply disappointed in Washington's Attorney General."

Unlike most court proceedings that are handled by the Office of the Attorney General, DNR will be forced to seek other counsel to represent the state given Attorney General Rob McKenna's refusal to do so. Commissioner Goldmark is currently assessing the state's options.

"By refusing to represent the Common School Trust and the non-tax revenue it generates, Mr. McKenna is choosing to allow the inappropriate use of eminent domain over Washington's schools," said Commissioner Goldmark. "Mr. McKenna is choosing to play politics with our state's heritage."

DNR has multiple concerns over the bifurcation of trust land parcels that cannot be mitigated. A transmission line cutting through the middle of trust land will reduce the value of the remaining lands and increase the cost of managing the trust's land including:

- Reduced income from the trust's land from road building and elimination of working lands.
- Increased fire risk from activities along the line's corridor. DNR has also had challenges with the PUD's vegetation management and inability to timely pay for fire costs.
- Increased road building would allow for more unauthorized use and increase enforcement costs.
- Increased costs to remove noxious weeds.

The state Attorney General's unwillingness to represent the trusts comes during difficult economic times and follows a year where DNR had to reduce staff by 114 people.

Washington Is A "Land Grant" State

Like many states in the American West, at statehood Washington received a checkerboard of "trust land" parcels from the Federal government. This land was meant to provide income for education and other public infrastructure. Unlike other states who have largely sold their granted lands, Washington's leaders have had the foresight to maintain this working lands base that is a vital economic engine.

Common School Trust

Since 1967, revenues derived on lands within the Common School Trust have provided about \$3 billion in non-tax revenue for the capital construction of public school facilities. These non-tax revenues are generated by the private sector on trust lands through agriculture, grazing, and timber harvest.

DNR also manages various trusts for universities, state facilities and counties throughout the state.

Media Contact: Aaron Toso, Director of Communications & Outreach, 360-902-1023, aaron.toso@dnr.wa.gov

###

CONTACTS

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Communications & Outreach Office
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dnrnews@dnr.wa.gov

FILES

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Goldmark v. McKenna
Agreed Stmt of Facts 0032

ATTACHMENT 11

[News > News Releases > 2010](#)

FOR IMMEDIATE RELEASE

[back](#)

June 08, 2010

OLYMPIA – Washington State Attorney General Rob McKenna issued the following statement today regarding his determination not to appeal a decision of the Okanogan County Superior Court. After considering all of the arguments presented, the superior court ruled that the Okanogan Public Utility District has authority to acquire through condemnation an easement over school trust lands for a transmission line.

“It’s unfortunate that the Lands Commissioner has inserted politics into a purely legal decision by the Attorney General’s Office. The assertion that politics played any part in our decision is wrong, and frankly, insulting.

This decision was thoroughly processed in the manner in which we handle all appeal decisions. The legal underpinnings of an appeal were researched and analyzed by attorneys assigned to DNR and by our Solicitor General’s Office, staffed by some of the finest appellate lawyers in the nation.

The decision not to appeal the Okanogan County Superior Court decision was based, as all of our appellate decisions are, on whether legal error was made by the trial court judge, consideration of the trial court record, and the likelihood of the appeal’s success. This process for handling appeals has been in place for many years.

It is regrettable that Commissioner Goldmark seeks to undermine the integrity of the Attorney General’s Office.”

-30-

Contacts:

[Dan Sytman](#), AGO Media Relations Manager, (360) 586-7842

Janelle Guthrie, AGO Communications Director, (360) 586-0725

Goldmark v. McKenna
Agreed Stmt of Facts 0033

ATTACHMENTS 12 AND 13 SEALED

ATTACHMENT 14



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[Home](#) > [Business & Permits](#) > [News](#) > McKenna refuses to appoint a Special Assistant Attorney General to protect Common School Trust lands in Okanogan County

MCKENNA REFUSES TO APPOINT A SPECIAL ASSISTANT ATTORNEY GENERAL TO PROTECT COMMON SCHOOL TRUST LANDS IN OKANOGAN COUNTY

FOR IMMEDIATE RELEASE

June 10, 2010

MCKENNA REFUSES TO APPOINT A SPECIAL ASSISTANT ATTORNEY GENERAL TO PROTECT COMMON SCHOOL TRUST LANDS IN OKANOGAN COUNTY

OLYMPIA – Statement from Commissioner of Public Lands Peter Goldmark on Attorney General Rob McKenna's refusal to appoint a Special Assistant Attorney General.

"I am deeply disappointed that Attorney General Rob McKenna has denied my request to appoint a Special Assistant Attorney General that would allow DNR to appeal the use of eminent domain against the Common School Trust in Okanogan County.

As Commissioner of Public Lands, I have a fiduciary responsibility to defend the trust. It is puzzling that our Attorney General will not allow his client's argument to be heard in court when he already supported trying it in a lower court.

While I am unsure what changed his mind, I hope he changes his mind again and appoints a Special Assistant Attorney General.

It is uncertain if there is a precedent for denying a request for a Special Assistant Attorney General to an agency headed by an independently elected official."

The original deadline to appeal the case in Okanogan County Superior Court was today, June 10, 2010. Due to interveners on the case filing an appeal, DNR has an additional 14 days to encourage the Attorney General to allow counsel to represent the state's interests.

Media Contact: Aaron Toso, Director of Communications & Outreach, 360-902-1023, aaron.toso@dnr.wa.gov

###

CONTACTS

DNR Communications & Outreach Office
360-902-1016
dnrnews@dnr.wa.gov

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Goldmark v. McKenna
Agreed Stmt of Facts 0037

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JUN. 10 2010

ATTORNEY GENERAL'S OFFICE
NATURAL RESOURCES DIVISION

10 JUN 10 10:37

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal
corporation of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person;
and TREVOR KELPMAN, a single
person; and DAN GEBBERS and REBA
GEBBERS, Husband and wife; and
WILLIAM C. WEAVER, Custodian for
Christopher C. Weaver, a minor; and
STATE OF WASHINGTON, and
PETER GOLDMARK, Commissioner of
Public Lands,

Respondents,

And,

CONSERVATION NORTHWEST, a
Washington Non-Profit Corporation,

Respondent-Intervenor.

NO. 09-2-00679-4

NOTICE OF APPEAL

NOTICE OF APPEAL - 1

COPY

GENDLER & MANN, LLP
1424 Fourth Avenue, Suite 715
Seattle, WA 98101
Phone: (206) 621-8868
Fax: (206) 621-0512

Goldmark v. McKenna
Agreed Stmt of Facts 0038

Respondent-Intervenor Conservation Northwest seeks review by the Washington State Court of Appeals, Division 3, of the following Orders entered on May 11, 2010 by Okanogan County Superior Court Judge Jack Burchard:

1. Order Denying Conservation Northwest's Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner;

2. Order Denying State's Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner;

3. Findings of Fact, Conclusions of Law, and Order on Public Use and Necessity – Respondents State of Washington and Peter Goldmark.

Copies of these orders are attached.

Dated this 9th day of June, 2010.

Respectfully submitted,

GENDLER & MANN, LLP

By: 

David S. Mann

WSBA No. 21068

Attorneys for Conservation Northwest

\\Conservation NW(Den)\Okanogan 09-2-00679-4\Notice of Appeal 6 09 10

NOTICE OF APPEAL - 2

GENDLER & MANN, LLP
1424 Fourth Avenue, Suite 715
Seattle, WA 98101
Phone: (206) 621-8868
Fax: (206) 621-0512

Goldmark v. McKenna
Agreed Stmt of Facts 0039

ATTACHMENT 16

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10 JUN 10 P3:37

STATE

SUPERIOR COURT OF WASHINGTON IN AND FOR OKANOGAN COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
Okanogan County, a municipal corporation,
of the State of Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person; and
TREVOR KELPMAN, a single person; and
DAN GEBBERS and REBA GEBBERS,
husband and wife; and WILLIAM C.
WEAVER, Custodian for Christopher C.
Weaver, a minor; and STATE OF
WASHINGTON, and PETER GOLDMARK,
Commissioner of Public Lands,

Respondents.

NO. 09-2-00679-4

NOTICE OF APPEAL

Petitioner Public Utility District No. 1 of Okanogan County seeks review by the Court of Appeals of the State of Washington, Division III, of the Order Granting Motion to Intervene by Conservation Northwest, entered in Okanogan County Superior Court on February 24, 2010. A copy of this Order is attached hereto. Counsel for the parties are listed below.

Public Utility District No. 1 of Okanogan County:

Michael D. Howe
Law Office of Michael D. Howe
10 Valley View Park Drive
Omak, WA 98841

NOTICE OF APPEAL - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

COPY

S1075921.1

Goldmark v. McKenna
Agreed Stmt of Facts 0040

1 P. Stephen DiJulio
2 Foster Pepper PLLC
3 1111 Third Avenue, Suite 3400
4 Seattle, WA 98101

5 Conservation Northwest:

6 David S. Mann
7 Gendler & Mann, LLP
8 1424 4th Ave., Suite 715
9 Seattle, WA 98101

10 State of Washington and Peter Goldmark, Commissioner of Public Lands:

11 Pamela Krueger
12 Assistant Attorney General
13 1125 Washington St. S.E.
14 P.O. Box 40100
15 Olympia, WA 98504

16 DATED this 10th day of June, 2010.

17 FOSTER PEPPER PLLC

18 

19 P. Stephen DiJulio, WSBA No. 7139
20 Adrian Urquhart Winder, WSBA No. 38071, and
21 LAW OFFICE OF MICHAEL D. HOWE
22 Michael D. Howe, WSBA No. 5895

23 Attorneys for Petitioner Okanogan County
24 PUD No. 1

25 NOTICE OF APPEAL - 2

26 FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
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ATTACHMENTS 17, 18, AND 19 SEALED

ATTACHMENT 20



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Home > Business & Permits > News > Commissioner Goldmark files with Supreme Court to compel Attorney General to represent the state

COMMISSIONER GOLDMARK FILES WITH SUPREME COURT TO COMPEL ATTORNEY GENERAL TO REPRESENT THE STATE

FOR IMMEDIATE RELEASE

June 21, 2010

COMMISSIONER GOLDMARK FILES WITH SUPREME COURT TO COMPEL ATTORNEY GENERAL TO REPRESENT THE STATE In The Meantime, AG McKenna To File Appeal "Contingently" In Okanogan PUD Condemnation Case

OLYMPIA – Commissioner of Public Lands Peter Goldmark today filed a petition for a writ of mandamus with the Washington State Supreme Court. The petition asks the court to compel the state Attorney General to represent their client, the Office of the Commissioner of Public Lands and the Washington State Department of Natural Resources, and the interests of the state.

Commissioner Goldmark was forced to appeal to the Supreme Court following multiple refusals from Attorney General Rob McKenna to file an appeal with the Division III Court of Appeals of the State of Washington or even appoint a Special Assistant Attorney General to do so. Goldmark has retained the pro bono legal services of attorney David Bricklin, at no cost to the state or trusts.

"It is essential that the Office of the Commissioner of Public Lands has the ability to carry out its fiduciary responsibility to the trusts, and not having counsel leaves the Common School Trust defenseless," said Goldmark. "The Supreme Court will be answering a very important question around the role of the Attorney General to set policy for the entire state."

The original deadline to appeal the Okanogan PUD condemnation case was June 10. That deadline was extended by two weeks due to actions by interveners in the case. Attorney General McKenna has now agreed to file the appeal "contingently," pending action from the Supreme Court on the writ of mandamus. Should the petition fail, the Attorney General has signaled that he would withdraw the appeal.

Commissioner Goldmark has requested that the Supreme Court rule on the petition in the next 30 days.

Past Statements Regarding The Okanogan PUD Case Appeal

June 8, 2010 – McKenna refuses to stand up for schools, Goldmark is forced to seek other options, <http://bit.ly/aik3yT>

June 10, 2010 – McKenna refuses to appoint Special Assistant Attorney General to protect Common School Trust lands in Okanogan County, <http://bit.ly/9m6oMG>

DNR – Managing Trusts And Protecting Natural Resources

Administered by Commissioner of Public Lands Peter Goldmark, DNR manages 2.9 million acres of state-owned trust lands, including forests, range, agricultural land, and commercial properties. Trust lands earn income to support schools, universities and other state institutions; and they help fund local services in many counties. Trust lands provide habitat for native plant and animal species, protect sources of clean water, and offer public recreation and educational opportunities statewide.

DNR is also steward of 2.6 million acres of aquatic lands, the bedlands under Puget Sound, the coast, including many beaches, and navigable rivers and natural lakes. These are managed on behalf of all Washington State citizens to protect fish and wildlife, and to facilitate commerce, navigation, and public access.

DNR provides wildfire protection and supports the state Forest Practices Board in protecting public resources on 12.7 million acres of private and state-owned forestlands. DNR geologists regulate surface mine reclamation, while DNR staff provide technical assistance for forestry and mining. DNR provides financial and grant assistance to state and local communities through a number of programs, including the Urban and

CONTACTS

DNR Communications & Outreach Office
360-902-1016
dnrnews@dnr.wa.gov

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RELATED LINKS

Goldmark v. McKenna
Agreed Stmt of Facts 0049

Community Forestry Program and the Forest Stewardship Program.

Media Contact: Aaron Toso, Director of Communications & Outreach, 360-902-1023,
aaron.toso@dnr.wa.gov

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Goldmark v. McKenna
Agreed Stmt of Facts 0050

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STATE OF WASHINGTON
OKANOGAN COUNTY SUPERIOR COURT

PUBLIC UTILITY DISTRICT NO. 1
OF OKANOGAN COUNTY, a
municipal corporation of the State of
Washington,

Petitioner,

v.

CHRISTINE DAVIS, a single person;
and TREVOR KELPMAN, a single
person; and DAN GEBBERS, and
REBA GEBBERS, husband and wife;
and WILLIAM C. WEAVER,
custodian for Christopher C. Weaver, a
minor; and STATE OF
WASHINGTON, and PETER
GOLDMARK, Commissioner of Public
Lands,

Respondent

and,

CONSERVATION NORTHWEST, a
Washington Non-Profit Corporation,

Respondent-Intervenor.

NO. 09-2-00679-4

CONTINGENT NOTICE OF APPEAL
TO THE COURT OF APPEALS

1. On Monday, June 21, 2010, David Bricklin, a private attorney with the law firm
of Bricklin and Newman, contacted the Office of the Attorney General to advise that he had
been retained by Peter Goldmark, the Commissioner of Public Lands, to commence an original

CONTINGENT NOTICE OF APPEAL TO
THE COURT OF APPEALS TO THE
COURT OF APPEALS

COPY

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE

PO Box 4010

Olympia, WA 98511

(360) 753-6700

Goldmark v. McKenna
Agreed Stmt of Facts 0051

1 proceeding in the Washington State Supreme Court, to compel this Office to file a Notice of
2 Appeal in this case.

3 2. Mr. Bricklin advised that he intended to file a Writ of Mandamus with the
4 Washington State Supreme Court on the afternoon of June 21st, and to request that the court
5 rule on the Writ on or before Thursday, June 24th.

6 3. Two other parties filed a Notice of Appeal in the captioned case on June 10,
7 2010. Pursuant to RAP 5.2(f), the deadline for another party to file a notice of appeal is
8 Thursday, June 24, 2010.

9 4. After considering the merits of the case, the record, and the consequences of an
10 appeal the Attorney General's Office has determined that pursuing an appeal of the captioned
11 case is not in the best legal interests of the State of Washington and unless compelled by a
12 court to do so, would not pursue an appeal in this case.

13 5. The legal question of whether the Attorney General may be compelled to pursue
14 this appeal at the insistence of the Commissioner of Public Lands, when in the legal judgment
15 of the Attorney General an appeal is not in the best legal interests of the State requires
16 reasonable time for briefing and a reasonable opportunity for a court to consider and decide the
17 question. The time between Mr. Bricklin's contact with this Office and the June 24th appeal
18 deadline does not afford adequate time for either.

19 6. Consequently, in order to provide time for appropriate briefing and
20 consideration of the mandamus action Contingent Notice of Appeal is hereby filed.

21 7. In doing so, however, the Attorney General hereby provides notice of his intent
22 to withdraw this Notice of Appeal and cease the prosecution of this appeal consistent with
23 resolution of the mandamus action.

24 Therefore, as disclosed and qualified above, the Respondent, State of Washington and
25 Peter Goldmark, Commissioner of Public Lands, hereby appeals to the Court of Appeals,
26 Division No. III the following Orders entered by Okanogan County Superior Court:

1) Order Denying State's Motion for Summary Judgment and Granting Summary Judgment in Favor of Petitioner; and

2) Findings of Fact, Conclusions of Law, and Order on Public Use and Necessity— Respondents State of Washington and Peter Goldmark.

Copies of these orders are attached.

DATED this 21st day of June, 2010.

ROBERT M. MCKENNA
Attorney General

Maurice Hart #7831 for
ROBERT K. COSTELLO, WSBA #12920
Deputy Attorney General
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robcc@atg.wa.gov
Attorneys for State of Washington

Counsel of Record:

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(Attorney for Petitioner)

P. Stephen Dijulio, WSBA #7139
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Seattle, WA 98101-3299
(Attorney for Petitioner)

Michael T. Zoretic, WSBA #21221
Stanislaw Ashbaugh
701 Fifth Avenue, Suite 4400
Seattle, WA 98104
(Attorney for Respondent Trevor Kelpman)

Jay A. Johnson, WSBA #7995
PO Box 2136
Wenatchee, WA 98807-2136
(Attorney for Respondents Dan and Reba Gebbers)

1 **Richard W. Pierson**, WSBA #3884
Williams & Williams, PSC
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Bothell, WA 98011
3 (Attorney for Respondents Dan and Reba Gebbers and Christine Davis)

4 **William C. Weaver**
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5 McKinleyville, CA 95519
(custodian for Christopher C. Weaver, a minor)

6 **David S. Mann**, WSBA #21068
7 Gendler & Mann, LLP
1424 Fourth Avenue, Suite 715
8 Seattle, WA 98101
(Attorney for Intervenor Conservation Northwest)

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Goldmark v. McKenna
Agreed Stmt of Facts 0054